Supreme Court of the United States.

No. 604.—October Term, 1904.

The Empire State-Idaho Mining and Developing Company and The American Bonding Company of Baltimore, Appellants, vs. Kennedy J. Hanley. } Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[May 15, 1905.]

Hanley brought this bill in equity in the Circuit Court of the United States for the District of Idaho, setting up diversity of citizenship as the ground of jurisdiction, and asserted ownership of an undivided one-eighth interest, and of an undivided one third interest, in the Skookum mining claim, Shoshone County, Idaho. As to the one-third interest, Hanley claimed under certain proceedings in the Probate Court of that county, which were, without notice to him as he said, set aside, and the interest conveyed to the Chemung Company, and by the latter to the Empire State &c. Mining Company. Hanley's title to the one-eighth interest was derived through mesne conveyances from the original grantee under a patent from the United States. This interest Hanley had conveyed to Sweeny and Clark by a deed deposited in the Exchange National Bank of Spokane, to be delivered on certain specified conditions, and he averred that Sweeny and Clark obtained possession of the deed wrongfully and contrary to the escrow agreement, and afterwards made a pretended deed of the interest to the Empire State Company.

On hearing, the Circuit Court decreed against Hanley as to both interests. Hanley carried the case to the Circuit Court of Appeals, which held that he was not entitled to relief as to the one-third interest, but that he was as to the one-eighth interest. The decree was therefore reversed and the cause remanded for further proceedings. 109 Fed. Rep. 712. The case went back and was referred to a master for an accounting as to the eighth interest, who reported a large amount of money as due to Hanley. The Circuit Court reduced the amount by deducting the cost of working the property while Hanley was excluded from the mine, and entered a decree quieting Hanley's title to the one-eighth interest and giving him judgment against the Empire State Company for the last named amount. Defendant appealed from this decree and filed a supersedeas bond with the American Bonding Company of Baltimore as surety, and Hanley

prosecuted a cross appeal questioning the deduction. The Circuit Court of Appeals sustained the cross appeal and held that the Circuit Court erred in allowing defendants their working costs. 126 Fed. Rep. 97. The case was remanded with directions to modify the decree. This was done and recovery of the original amount decreed, and also recovery on the bond of the amount it was given to secure, and another appeal was taken by the companies to the Court of Appeals, which affirmed the decree. The pending appeal having been subsequently allowed, was submitted on motion to dismiss.

Mr. Chief Justice FULLER delivered the opinion of the Court:

We are of opinion that the jurisdiction of the Circuit Court was dependent entirely upon diversity of citizenship, and that this appeal must be dismissed. Appellants' contention is that the allegations of Hanley's complaint as to the one-third interest amounted to the assertion that he had been deprived of that interest by the Probate Court without due process of law, and were sufficient to support the jurisdiction of the Circuit Court on this ground, irrespective of diversity of citizenship. We do not so regard the allegations. What Hanley asserted was that his title to the third interest was good because he had purchased it from the administrator under the decree of the Probate Court, and that the subsequent decree of that court annulling the prior decree was invalid for want of jurisdiction to render it at a subsequent term, for want of notice, and for lack of evidence.

Granting that the Fourteenth Amendment applies to the action of the courts as well as of the legislative and executive authorities of the States, the averments of the complaint did not suggest that the courts of Idaho would hold the later proceedings of the Probate Court, if attacked by Hanley directly, effectual to overthrow his purchase; or charge that in such action as had been taken they had committed error so gross as to amount in law to a denial by the State of due process of law. Hanley's contention was in effect that the later proceedings were void for lack of jurisdiction, and he did not pretend that he could not have obtained redress by direct suit in the State courts.

The Constitution and laws of the United States were not mentioned in the complaint, nor any dispute or controversy raised as to the effect or construction of the Constitution or laws on the determination of which the result depended; nor was any title, right, privilege, or immunity specially set up or claimed under Constitution or law.

If this had been a writ of error to a State court, the averments would not have brought it within section 709 of the Revised Statutes. If it had been a direct appeal from the Circuit Court under section 5 of the act of

March 3, 1891, it could not have been sustained because the construction or application of the Constitution of the United States was not distinctly presented for decision in the court below.

And as an appeal from the Circuit Court of Appeals under section 6 of the act of 1891, it cannot be sustained because it falls within the settled rule that: "Where the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship it will not be held to rest also on the ground that the suit arose under the Constitution of the United States, unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution upon the determination of which the result depends, and which appears on the record by a statement in legal and logical form such as good pleading requires; and where the case is not brought within this rule the decree of the Circuit Court of Appeals is final." *Arbuckle* v. *Blackburn*, 191 U. S. 405; *Western Union Telegraph Company* v. *Ann Arbor Railroad Company*, 178 U. S. 239.

If the allegation of diversity of citizenship had been omitted from the bill, the jurisdiction could not have been maintained.

The decisions of the courts below did not turn on any Federal question. The Circuit Court held that Hanley had no title to the one-third interest because the Idaho statute relating to probate sales had not been complied with; the Court of Appeals, that Hanley was not entitled to the aid of a court of equity, in respect of that interest, because of his conduct at the time of the transaction.

Appellants succeeded in their defence as to the one-third interest, and Hanley accepted the result on the second appeal. They now make a grievance of their own success and ask that the supposed constitutional question as to the third interest only be made the basis of jurisdiction here, although, if the decree disposed of any such question, it was in their favor. In our opinion this cannot be permitted. *Anglo-American Provision Company* v. *Davis Provision Company*, 191 U. S. 376; *Lampasas* v. *Bell*, 180 U. S. 270.

Appeal dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.